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MULTIJURISDICTIONAL PRACTICE OF LAW OR UNAUTHORIZED PRACTICE OF LAW – *SURVEY OF THE ISSUE*

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If you have not heard the words "multijurisdictional practice of law" in the last year or so, it may be because you were too busy engaging in it. As the name implies, it refers to a law practice that crosses the jurisdictional boundaries of one or more states. With modern technology such as the Internet, and not so modern technology such as the telephone, permitting attorneys to easily ignore the physical boundaries of state lines, many licensed legal practitioners are often called upon to engage in the multijurisdictional practice of law, or MJP. As many attorneys and officials of state bar organizations around the country are beginning to realize, however, this type of practice (one that many attorneys engage in every day) may subject the unwary lawyer and law firm to severe penalties, including criminal sanctions, for the unauthorized practice of law.

Until the last several years, many attorneys believed, perhaps justifiably,[1] that so long as an attorney physically remained within the state where he or she is licensed, the attorney would not have engaged in the unauthorized practice of law. In addition,

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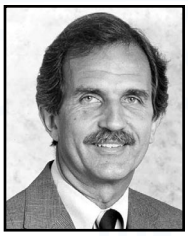
[1] *California's State Bar Act, which regulates the matters discussed in this article, was first enacted in 1927. Not until the 1998 Birbrower case over 70 years later has California's Supreme Court opined on the issues discussed in this article. Given that the multijurisdictional practice of law is widespread within and outside of California, it seems unlikely that this was the first opportunity for the Court to address the aspects of the Act relevant to this article.*

YOUR BUSINESS LAW SECTION GOES ELECTRONIC: *E-NEWS AND MORE*

by Roland E. Brandel



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Until recently, the ability to share this content more broadly with BLS members as

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(g) Profit Sharing and Stock Bonus Plans. The annual limit on the amount of deductible contributions to a profit sharing or stock bonus plan is increased to 25% of the covered employees' compensation. Generally, a money purchase pension plan will be treated similarly.

(h) Credit for Employer-Provided Child Care Facilities. Employers are allowed a tax credit equal to 25% of qualified expenses for child care resource and referral services, up to a maximum $150,000 credit per year.

PENALTY FOR FAILURE TO REPORT OUTBOUND ASSET TRANSFER

U.S. taxpayers are required to report asset transfers to non-U.S. persons in certain liquidations, reorganizations and similar tax-deferred exchanges. IRC Section 6038B. Taxpayers not reporting such transfers to the IRS (whether by filing Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation" or otherwise) are potentially subject to a penalty equal to ten percent of the value of the property transferred; in certain circumstances, nonreporting taxpayers may be required to recognize taxable gain which otherwise would not have been triggered.

In Field Service Advice 200132029 (5-2-2001), the Internal Revenue Service has expressed an intention to actually impose this penalty, detailing a situation in which it believes the penalty is warranted.

May this FSA serve as a reminder of the reporting requirement to practitioners advising in tax-deferred transactions involving an outbound transfer, including certain situations which might not otherwise come to mind, such as the liquidation of a U.S. corporation with a non-U.S. shareholder, the merger of a U.S. and a non-U.S. corporation or the contribution of property to a non-U.S. corporation (or partnership) in exchange for an ownership interest.

CORPORATE ALTERNATIVE MINIMUM TAX

Important by its omission, there was no reform or other significant change in the federal corporate alternative minimum tax ("AMT") during 2001. The corporate AMT - a separate tax system computed independently from the "regular" corporate income tax system - can trigger a substantial tax liability. Even when it does not, it greatly increases and complicates the record keeping necessary for determining a corporation's tax liability. May corporate AMT reform be on the horizon.

TAKE A TAX PROFESSIONAL TO LUNCH

The tax rules continue to get more complex. With the many phase-ins and phase-outs introduced by the 2001 Act, let alone its sunset provision and the anticipated legislative responses, things are only going to get more involved. Might as well get to know a tax professional or two a little better - you are likely to be spending alot more time together.

2001 ANNUAL REVIEW AVAILABLE

The Business Law Section's 2001 Annual Review of Selected Recent Developments is available to members of the Business Law Section at the web site of the Business Law Section (http://www.calbar.ca.gov/buslaw/). Printed copies of the 2001 Annual Review will be provided to members upon request.

MULTIJURISDICTIONAL PRACTICE

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many attorneys believed that in-house counsel need not be members of the bar of the state where they are employed. According to conventional wisdom, unauthorized practice of law rules existed to protect the unsuspecting public from misrepresentation by persons who are not licensed to practice law in any jurisdiction. Such a belief can no longer be justified. The California Supreme Court case of *Birbrower, Montalbano, Condon & Frank, PC v. Superior Court* (1998) 17 Cal.4th 119, cert. den., 525 U.S.290, raised the consciousness of the legal profession to the fact that courts, legislatures and state bars may not necessarily subscribe to such "conventional wisdom."

In *Birbrower*, the California Supreme Court denied an out-of-state[2] law firm the right to collect over $1 million in fees because the court found the firm had engaged in the unauthorized practice of law by representing a California client in arbitration without first being admitted to the California bar.[3] The decision unleashed a national debate on what constitutes the practice of law, the circumstances under which a lawyer's practice crosses state lines, and when such practice should be permitted without first obtaining a license by such state to practice law. Several proposals generated as a result of the debate are currently pending before bar organizations at the state and national level. This article summarizes current California law and highlights the status of some of the MJP developments around the country.

CALIFORNIA'S UNAUTHORIZED PRACTICE OF LAW RULES

The State Bar Act containing California's practice of law rules (Business and Professions Code §§ 6000-6172) was

[2] *Throughout this article, unless otherwise described, the term "in-state" refers to the state within which an attorney is claimed to have practiced law without authority, and the term "out-of-state" refers to states other than that where the attorney is claimed to have practiced law.*

[3] *Birbrower, Montalbano, Condon & Frank, PC v. Superior Court (1998) 17 Cal.4th 119, 127.*

originally adopted in 1927. The unauthorized practice prohibition is contained in Business and Professions Code § 6125, which states: "No person shall practice law in California unless the person is an active member of the State Bar."[4]Although the term "practice of law" was not defined in the act, since the inception of the law courts have consistently applied the definition contained in *People v. Merchants Protective Corp.*, a 1922 case.[5] This definition was adopted verbatim from a decision in Indiana issued in 1983,[6] causing some to believe that laws restricting MJP are based on antiquated notions of how and to whom legal services are provided.[7]

Many of the reasons for the statute that existed over 75 years ago still exist today. In fact, the president of California's State Bar, Karen Nobumoto, recently called upon the bar to lobby to increase the criminal penalties that now exist regarding the unauthorized practice of law.[8] She believes that certain violations ought to be classified as a felony, not a misdemeanor as under current law.

The primary purpose of the unauthorized practice statute is the protection of the public, particularly consumers of legal services.[9] The legislature wanted to protect the public against non-lawyers holding themselves out as lawyers.[10] In calling for harsher punishment for the person who is not licensed anywhere to practice law and who engages in intentional misrepresentation of that fact, Ms. Nobumoto observed that the current law was written years ago "with the intent of stopping paralegals who sometimes went too far in their intention of helping people."[11] Perhaps because this purpose is so primary, the average lawyer is likely to connect the unauthorized practice of law statutes only to individuals who are not lawyers, that is, those who hold themselves out as lawyers out of misguided helpfulness or in order to take advantage of the unsophisticated public at large.[12]

Birbrower made clear that an additional objective of the statutory scheme, at least in the opinion of the California Supreme Court, is to protect "against the dangers of legal representation and advice given by persons not trained, examined and licensed for such work, *whether they be laymen or lawyers from other jurisdictions*."[13] Thus, the laws are also designed to protect consumers of legal services against lawyers not familiar with local differences in the law.[14] While there still is some merit to this purpose, in an age where accessing local law is as easy as accessing the Internet and where many states have adopted uniform laws, one wonders how important this objective remains.

The unauthorized practice rules were implemented to address other concerns as well. The legislature believed that in order to protect the public, the state must have the ability to discipline those who violate its standards of professionalism. Requiring bar admission enables the disciplinary regime to reach those who violate bar standards.[15] There also seems to be some element of protectionism in favor of the local bar — both protection from non-lawyer providers of legal services (independent paralegals, accountants, financial advisors, etc.) and from out-of-state lawyers "stealing" in-state clients and profits.[16]

Not surprisingly, however, in a modern world of national and multinational clients and global communications via telephone, cell phone, facsimile and the Internet, it is nearly impossible to represent a corporate client without being asked to physically or otherwise "practice law" across jurisdictions.[17] In fact, it happens so frequently and to so many lawyers, that many have not given any thought to the fact that their conduct may be sanctionable.[18] *Birbrower* itself presents the sort of multijurisdictional practice scenario that is common to the contemporary business and legal environment.[19]

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[4] *Maintaining active membership in the California State Bar currently requires having completed the necessary education (generally at an accredited law school) , having passed the substantive and professional responsibility bar exams (Bus. & Prof. Code § 6060), paying regular dues (Bus. & Prof. Code §§ 6140, 6143), complying with continuing legal education requirements (Bus. & Prof. Code § 6070), and complying with the general State Bar Act rules governing client relations and professional conduct in California.*

[5] *Birbrower, supra at 128, citing People v. Merchants Protective Corp. (1922) 189 Cal. 531.*

[6] *Id. at 142.*

[7] *"[It's] an Abe Lincoln law system in the 21st century," says Susan Hackett, Senior Vice President and General Counsel at the American Corporate Counsel Association. "There was nothing wrong with Abe Lincoln law, but it is just not the case anymore." Delaware Bar Learns of MJP Pitfalls (April 9, 2001) Delaware Law Weekly.*

[8] *Intentional UPL Should Be a Felony, Karen Nobumoto, California Bar Journal (November, 2001) page 10.*

[9] *California Supreme Court Advisory Task Force on Multijurisdictional Practice, Final Report and Recommendations (January 7, 2002), www.courtinfo.ca.gov/reference/documents/finalmjprept.pdf., page 5.*

[10] *"[T]he profession and practice of law, while in a limited sense a matter of private choice and concern in so far as it relates to its emoluments, is essentially and more largely a matter of public interest and concern, not only from the viewpoint of its relation to the administration of civil and criminal law, but also from that of the contacts of its membership with the constituent membership of society at large, whose interest it is to be safeguarded against the ignorances or evil dispositions of those who may be masquerading beneath the cloak of the legal and supposedly learned and upright profession." State Bar of California v. Superior Court (1929) 207 Cal. 323, 331.*

[11] *Intentional UPL Should Be a Felony, Karen Nobumoto, California Bar Journal (November, 2001), page 10.*

[12] *The Perils of Multijurisdictional Practice, The Washington Lawyer (February, 2002), page 21.*

[13] *Birbrower, supra, at 132, citing Spivak v. Sachs (1965) 16 N.Y.2d 163 (emphasis added).*

[14] *At one time, a lawyer in one county of a state might need to associate counsel from another county in that same state to avoid the complications associated with local rules. Peter R. Jarvis, Where You Stand Depends on Where You Sit: One Litigator's View of Multijurisdictional Practice Issues and Related Policy Questions, ABA Fordham Symposium Program Materials, at http://www.abanet_org/cpr/mjp-pjarvis. html. Today, of course, an attorney licensed by the State of California may practice in any county of the state.*

[15] *California Supreme Court Advisory Task Force on Multijuridictional Practice, Final Report and Recommendations, supra, page 17.*

[16] *Peter R. Jarvis, Where You Stand Depends on Where You Sit: One Litigator's View of Multijurisdictional Practice Issues and Related Policy Questions, Peter R. Jarvis, Fordham Symposium Program Materials; at http://www.abanet_org/cpr/mjp-pjarvis. html.*

[17] *"[T]he rules were developed at a time when there was no fax, when there was no e-mail, when there were no transcontinental jets. So we have to bring them up-to-date. Your physical presence in any particular place is really irrelevant in the modern world." The Perils of Multijurisdictional Practice, The Washington Lawyer (February, 2002), page 21.*

[18] *Susan Hackett, Senior Vice President and General Counsel at the American Corporate Counsel Association believes, "We have rules that every lawyer in the United States is breaking . . . ." The Perils of Multijurisdictional Practice, The Washington Lawyer (February, 2002), page 21.*

[19] *Id. at 22.*

THE *BIRBROWER* CASE

The chain of events in the *Birbrower* case began with the relationship between Birbrower, Montalbano, Condon & Frank (the "Birbrower Firm"), a New York law firm, with a company known as ESQ Business Services, Inc., a New York Corporation ("ESQ-NY"). In 1990, ESQ Business Services, Inc., a California corporation ("ESQ-CA"), was formed as a sister corporation to ESQ-NY.[20] The Birbrower Firm had represented ESQ-NY and the family of the owners of ESQ-NY and ESQ-CA since 1986. In 1992, ESQ-CA and ESQ-NY again retained the Birbrower Firm, pursuant to a written fee agreement, to perform legal services relating to a claim against Tandem Computers Inc. ("Tandem"), arising out of a contract between the ESQ-NY and Tandem. The contract with Tandem stated that California law would govern the agreement and provided for arbitration of contractual disputes by the American Arbitration Association ("AAA"). None of the Birbrower Firm's attorneys were licensed to practice law in California.

After the underlying matter with Tandem was settled, ESQ-CA sued Birbrower for malpractice and claimed that the Birbrower Firm engaged in the unauthorized practice of law in California because none of its attorneys were licensed to practice law within California. By asserting its claims, ESQ-CA sought to deny the Birbrower Firm the fees the firm had accrued as a result of its work in the Tandem dispute. The California Supreme Court, in its 1998 opinion, held that the firm had violated California Business and Professions Code § 6125 because it had engaged in the practice of law within the State of California and did so without a license. The Court therefore affirmed the lower court's ruling that the Birbrower Firm was not entitled to any fees it earned while practicing law within the state.[21]

The unauthorized practice of law is defined within Business and Professions Code § 6125 as the practice of law in California while not being an active member of the State Bar. The statute does not specifically define what constitutes the "practice of law" or offer guidance as to when it is being done "in" the state. Those definitions have been left open to judicial interpretation.

In *People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535, the Supreme Court defined "the practice of law" to mean the "doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure," and to include "legal advice and legal instrument and contract preparation, whether or not these subjects were rendered in the course of litigation."[22]

The Supreme Court in *Birbrower*, fearing a limitation on "section 6125's application to [only] those cases in which nonlicensed out-of-state lawyers appeared in a California courtroom without permission," determined that the Birbrower Firm had engaged in the practice of law in the course of its representation of ESQ-CA.[23] However, demonstrating the difficulty in knowing what actions constitute the practice of law for purposes of the statute, Justice Kennard in dissent pointed out that because the dispute over the contract with Tandem had to be heard in arbitration before the AAA,[24] it was reasonable to find that what the Birbrower Firm had engaged in was not the "practice of law." Kennard observed that New York courts have held that "representation of a party in an arbitration proceeding by a nonlawyer or a lawyer from another jurisdiction is not the unauthorized practice of law."[25] The dissent also observed that, pursuant to AAA rules, one may be represented by counsel "or *other* authorized representative" in AAA arbitration.[26]

While the definition of "practice of law" has existed at least since 1922, no case prior to *Birbrower* defined what it means to engage in such practice "in" the state.[27] On this point, the opinion in *Birbrower* surprised many attorneys. Many attorneys consider the term "in California" to refer to a physical presence in the state. While the physical location of the attorney at the time the legal services are rendered is helpful to the analysis, the California Supreme Court held that it is not dispositive of presence or lack thereof.

The *Birbrower* Court chose not to define "in California" as being restricted to legal activities while the attorney is physically present in the state. Thus, an attorney potentially can engage in practice "in" California though never setting foot here. Likewise, the Court rejected the "notion that a person *automatically* practices law 'in California' whenever that person practices California law anywhere, or 'virtually' enters the state by telephone, fax, email or satellite."[28] Thus, an attorney is not necessarily engaging in practice "in California," even if physically present.

The Court, instead, defined the practice of law as occurring "in California" when it "entails sufficient contact with the California client to render the nature of the legal service a clear legal representation."[29] In other words, even if the attorney is not physically present, the practice can occur "in California" if there is sufficient legal services contact with a California client. While the Court declined to give a "comprehensive list of what activities constitute sufficient contact with the state," it did offer some guidance.[30] The Court stated: "In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer's activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the lawyer practiced law 'in California.' The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations."[31]

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[20] *"Brother" corporation may be a better description; the sole shareholder of ESQ-CA, Iqbal Sandhu, was a vice president of ESQ-NY and the brother of the sole shareholder of ESQ-NY, Kamal Sandhu. Birbrower, supra, at 141.*

[21] *The Court left open the possibility that the firm could recover a limited amount for the services the firm rendered while "in" New York. Birbrower, supra, at 137.*

[22] *People v. Merchants Protective Corp., supra, at 535.*

[23] *Birbrower, supra, at 129.*

[24] *Birbrower, supra, at 146*

[25] *Id. at 147, citing Williamson v. John D. Quinn Const. Corp. (S.D.N.Y., 1982) 537 F. Supp 613, 616.*

[26] *Kennard added that major arbitration associations have recognized that "nonattorneys are often better suited than attorneys to represent parties in arbitration." Id. at 146 (emphasis added).*

[27] *Id. at 128.*

[28] *Id. at 129.*

[29] *Id. at 128.*

[30] *Id. at 129.*

[31] *Id. at 128.*

Thus, the determination of whether or not certain activity is to be considered the practice of law in California, within the meaning of Business and Professions Code § 6125 is fact intensive. In *Birbrower*, the Court looked to the fact that attorneys from the Birbrower Firm filed the underlying claim with AAA in San Francisco, California.[32] They also traveled to California on several occasions in connection with the Tandem claim. During such trips, the attorneys discussed the Tandem dispute with ESQ-CA representatives and gave legal advice related to the claim. They also met with representatives of Tandem and conducted settlement negotiations. Part of the settlement negotiations in California included (a) the Birbrower Firm's giving its opinion of the merits of the case to ESQ-CA in the event the dispute proceeded to hearing, and (b) private meetings between the Birbrower Firm and ESQ-CA representatives regarding a settlement offer made by Tandem.[33]

DEVELOPMENTS SINCE *BIRBROWER*

The only legislative response to *Birbrower* was the enactment of laws expressly authorizing out-of-state attorneys to represent parties in arbitration in California.[34] However, since *Birbrower*, other court decisions have helped to clarify the definition of when a lawyer is practicing "in" a state. One of the most significant was a probate case, *In the Estate of Condon* (1998) 65 Cal. App. 4th 922, which held that the client's residence or principal place of business may be a determinative factor of whether or not the legal services were rendered within the state.[35]

The client at issue was Michael Condon, a Colorado resident. Condon was co-executor, with his sister, of the estate of Evelyn J. Condon, his mother, which was being administered by a California probate court. Condon retained the Elrod Firm in Colorado to advise him in his role as co-executor in the probate proceedings, and separately retained California counsel for the purpose of filing papers and making appearances on his behalf in the California probate court. The Elrod Firm had been retained by Evelyn J. Condon to prepare her estate plan in Colorado. Condon's sister also retained counsel in California.[36]

The Elrod Firm's legal work related to the case was largely performed in Colorado. In most instances, the Elrod Firm communicated with the sister's counsel and others in California by telephone, fax, and mail. Of the 315.8 billable hours spent on the case, only 10 represented hours for services rendered while members of the Elrod Firm (none of whom were admitted to practice in California) were physically present in California.[37]

Once the estate was settled, Condon petitioned the court for compensation from the estate for the Elrod Firm's legal services. His sister challenged the petition on grounds unrelated to the practice of law issue. Upon learning that the members of the firm were not admitted to practice in California, the trial court found, on its own, that the members had practiced law in California in violation of the Business and Professions Code § 6125 and held that compensation could not be awarded.[38] The Court of Appeals reversed, holding that the client's residence should be determinative of the question of whether the firm engaged in the unauthorized practice of law in California, and that the client in this case resided in Colorado, not California.[39]

The court explained that it was "[a]dopting the premise, as articulated in *Birbrower*, that the goal of section 6125 is to protect California citizens from incompetent or unscrupulous practitioners of law," and therefore concluded that Section 6125 "is simply not applicable to our case."[40] The court further stated: "Clearly, the state of California has no interest in disciplining an out-of-state attorney practicing law on behalf of a client residing in the lawyer's home state."[41] Even though legal proceedings were held in California, the court in *Estate of Condon* found no practice of law "in California" by the Elrod Firm.[42]

Developments on the issue of MJP are ongoing in other states as well.[43] At least one other jurisdiction — Hawaii — has applied the factors discussed in *Birbrower* in determining what constituted the "in-state" practice of law in that jurisdiction.

In *Fought & Co., Inc. v. Steel Engineering and Erection, Inc.* (1998) 87 Haw. 37, 951 P.2d 487, plaintiff Fought & Company sought to recover its legal fees after a successful appeal. Fought's application for fees was opposed on several grounds, including that recovery of fees for work performed by Fought's outside general counsel (Kobin), who was not licensed to practice law in Hawaii, was not permissible. The Hawaii Supreme Court rejected this argument, stating:

> Fought and Kobin are both located in Oregon. Hence, Kobin did not represent a 'Hawaii client.' Furthermore, all of the services rendered by Kobin were performed in Oregon, where the firm's attorneys are licensed. Kobin did not draft or sign any of the papers filed during the appeal, did not appear in court, and did not communicate with counsel for other parties on Fought's behalf. Finally, Kobin's role was strictly one of consultant to Fought and Fought's Hawaii counsel. We are convinced that Fought's Hawaii counsel were at all times 'in charge' of Fought's representation within the jurisdiction so as to insure that Hawaii law was correctly interpreted and applied. While Kobin undoubtedly contributed to the successful completion of the litigation in this case by its collaborative effort with Fought's Hawaii counsel, we cannot say, on the record before us, that Kobin rendered any legal services 'within the jurisdiction.' Because Kobin's law practice in Oregon is not regulated by Hawaii law, it is apparent that Kobin did not violate HRS §§ 605-14 and 605-17 or the public policy embodied by those statutes in rendering legal services to Fought. Accordingly, the statutes do not bar

[32] *Id. at 125.*
[33] *Id.*
[34] *Cal. Code Civ. Proc. § 1282.4; Cal. Rules of Court, Rule 983.4.*
[35] *Estate of Condon, 65 Cal. App. 4th 927*
[36] *Id. at 923-924.*
[37] *Id. at 924.*
[38] *Id.*
[39] *Id. at 927.*
[40] *Id. at 927, 928.*
[41] *Id. at 927.*
[42] *Id. at 928.*
[43] *A more extensive review of cases involving the unauthorized practice of law by licensed attorneys can be found in "Take Caution When Representing Clients Across State Lines: The Services Provided May Constitute The Unauthorized Practice Of Law," by Diane Leigh Babb, Alabama Law Review, Winter, 1999.*

Fought's recovery of fees for services rendered by Kobin in the present matter.[44]

The Hawaii Supreme Court, like the court in *Estate of Condon*, found that the lack of significant physical presence in the state and the representation of an out-of-state client were critical components in its "within the jurisdiction" analysis. The opinion in *Fought & Co.* also confirmed that courts are enforcing state admission rules not only against unlicensed lay people, but against attorneys from elsewhere who may be unfamiliar with local law.

WHY THESE RULES DO NOT WORK

As a result of the significant changes that have occurred in the practice of law, the nature of business, the ease of communication and the demands of sophisticated clients since 1927, when the State Bar Act was enacted, the rules on the unauthorized practice of law present many problems for the modern practitioner engaged in MJP. A task force set up by the California Supreme Court to report on the effects of the current statutory scheme on MJP identified several areas where the current restrictions on licensed attorneys from other states may not be serving the public interest, including in-house counsel working in California, transactional attorneys temporarily in the state and litigators temporarily in the state.[45]

In-house counsel present a unique challenge to the administration of the unauthorized practice laws. In-house lawyers are routinely asked to provide legal analysis on matters crossing state lines and are often transferred to various jurisdictions for short periods of time.[46] This is particularly true of corporate counsel for large companies that have offices in many states.[47]

At the same time, companies that are large enough to employ in-house counsel are likely to be sophisticated consumers of legal services and able effectively to screen the attorneys they hire for pertinent competencies without needing assurances that the attorney satisfied a particular state's licensing requirements.[48] Moreover, in-house counsel are under the constant scrutiny of their employer, who can immediately address any performance deficiencies. No members of the general public are at risk if such attorneys are not licensed.[49]

The same may also be true of transactional attorneys working in the state on a temporary basis. While an in-state lawyer in private practice may be heartened to know there are built-in incentives to retain him or her over an out-of-state peer, that a particular attorney is licensed within a given state is not usually significant to the client's choice of counsel. A sophisticated consumer of legal services can discern if an attorney can competently complete an assignment without requiring the attorney to complete state bar requirements for admission.[50] In-state clients may wish to hire out-of-state counsel for their special expertise in a practice area.[51] Clients acquiring an in-state subsidiary or division may require out-of-state counsel to come into the state to conduct due diligence. Additionally, entities with sophisticated legal demands often create longstanding relationships with outside counsel to allow the firms to provide coordinated legal service quickly and efficiently.[52] Retaining separate counsel licensed in California and educating them as to the specific needs of the client for a discrete, temporary project within the state may be impractical, and certainly would be expensive.[53]

Lastly, while many might assume that out-of-state litigators are sufficiently accounted for with existing *pro hac vice* rules, attorneys often need to perform in-state legal tasks that do not fit under the *pro hac vice* umbrella.[54] For example, an attorney can only request *pro hac vice* status for litigation that has already commenced in the state.[55] The rules do not address the situation where the out-of-state attorney is in the state preparing to file the matter.[56] Neither do they provide protection for an out-of-state lawyer who is called on to enter the state in conjunction with a deposition, document review, settlement negotiation or other discrete task arising out of litigation pending in another jurisdiction.[57]

To better understand the effect of the unauthorized practice of law rules on MJP, consider the following hypothetical: an attorney in private practice representing a manufacturing client having its corporate headquarters in California and manufacturing plants in several Midwest states is retained to determine the scope of the potential liability and the best approach to mitigate it as a result of a suspected defect in the manufacturing process that has caused injury to several customers. Further, suppose that in the process of retaining the firm, the general counsel informs an attorney from the firm that they were retained because she feels their longstanding relationship will provide her better cost efficiencies and greater control over the matter, even though she could get a cheaper rate from a Midwest firm. Lastly, assume she

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[44] *Fought & Co., Inc. v. Steel Engineering and Erection, Inc. (1998) 87 Haw. 37, 48, 951 P.2d 487, 498.*

[45] *Specifically, the task force identified six areas: (1) in-house counsel working in California; (2) public interest lawyers; (3) non-litigating attorneys temporarily in the state; (4) litigators temporarily in the state; (5) experienced lawyers seeking permanent admission to the California State Bar; and (6) government lawyers working in California. California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendation, supra, pages 20-22.*

[46] *The Perils of Multijurisdictional Practice, The Washington Lawyer (February, 2002), pages 21, 23.*

[47] *Id. at 23.*

[48] *See California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendations, supra, page 21.*

[49] *Id. Indeed, the general public ultimately could be harmed by vigorous enforcement of current rules on unauthorized practice. Limiting companies to hiring only in-house counsel who are licensed in a particular state may have the unintended consequence of discouraging companies from doing business within the state and increasing the cost of doing business in the state, which costs may be borne by consumers. Id.*

[50] *American Corporate Counsel Association, The In-House Case for the Multijurisdictional Practice of Law in the United States, www.acca.com/advocacy/mjp/accapostion.html, p. 2.*

[51] *California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendation, supra,, page 21.*

[52] *American Corporate Counsel Association, The In-House Case for the Multijurisdictional Practice, of Law in the United States, American Corporate Counsel Association: www.acca.com/advocacy/mjp/accapostion.html, p. 2.*

[53] *California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendations, supra, page 18.*

[54] *Id. at 19.*

[55] *Cal. Rules of Court, Rule 983; California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendations, supra, page 22.*

[56] *Id.*

[57] *Id.*

arranges interviews for counsel with each plant manager and with several engineers at the manufacturing plants themselves. Assuming the attorney responds to the demands of this client, the firm may have a multijurisdictional practice problem. Assuming that the lawyers in the firm are only licensed in the state of California, has the firm violated the unauthorized practice rules?

Prior to *Birbrower*, had the attorney conducted the client interviews without leaving the state (for example, telephonically), it may have been reasonable to assume that the firm had not violated the unauthorized practice statutes. Post-*Birbrower*, that assumption may not be reasonable. Assuming that each of the states where manufacturing plant were located applies the standards articulated by the *Birbrower* court, the physical location of the attorney at the time legal services are provided (California in the example) is not dispositive.[58] The *Birbrower* Court clearly indicated that "one may practice law in the state in violation of section 6125 although not physically present here by advising . . . by telephone, fax, computer, or other modern technical means."[59] Whether the practice of law within the state "entails sufficient contact with the [in-state] client to render the nature of the legal service a clear legal representation," is a case-by-case factual determination.[60] In analyzing location of practice, the *Birbrower* Court stated the primary inquiry was if there were "sufficient activities" within the state or if there was a "continuing relationship" with the client within the state.[61]

If the attorney physically conducted interviews in jurisdictions where he is not authorized to practice law, that physical presence, while not dispositive under the sufficient contacts analysis, does have some bearing. As the *Condon* case, discussed above, pointed out, a client's residence or principal place of business may be a determinative factor.[62] Although the client's headquarters are in California in the example above, the manufacturing divisions are in Midwestern states. Arguably a court from one of the Midwestern states could determine that representing a division in the state by itself is "sufficient" to find the firm in violation of unauthorized practice laws.[63] Assuming that the attorney was also being asked to interpret the laws of the states where the manufacturing plants were located, it appears that, under *Birbrower*, there could be sufficient contacts by which to find the firm had rendered legal services in the Midwestern states.[64]

The result of the analysis may not be materially different even if the substantive area of law was one of Federal practice (e.g. bankruptcy, CERCLA, etc.). The *Birbrower* Court stated that the State Bar Act "does not regulate practice before United States courts."[65] However, that should be of little comfort to the multi-state practitioner because the Court also noted that many local United States District Court rules condition admission to active membership in the local state bar.[66]

As if losing fees, as occurred in *Birbrower*,[67] or being convicted of a misdemeanor[68] was not penalty enough, an attorney engaging in MJP as set forth in the hypothetical risks violating the canons of legal ethics in his or her state of admission.[69]

California's Rules of Professional Conduct, Rule 1-300(B), states that members of the bar "shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." The model rules of the American Bar Association, which form the basis for many states' professional responsibility codes, are generally the same.[70] Accordingly, it is not enough to know how the State of California defines the "practice of law," one must know how each state touched by the representation defines this term.

It may appear to some that the solution to the issues presented by *Birbrower* can be avoided by associating local counsel in each out-of-state location where questions may arise. It may not be that easy. In footnote three of *Birbrower*, the Court stated that "contrary to the trial court's implied assumption, no statutory exception to section 6125 allows out-of-state attorneys to practice law in California as long as they associate local counsel in good standing with the State Bar."[71] Given the *Birbrower* Court's reluctance to fashion any exception to Business and Professions Code § 6125 in the absence of legislative action,[72] footnote three of the *Birbrower* opinion has been given a great deal of attention by many who are interested in this area.[73] They fear that the footnote may be used to close the door on what has traditionally been looked at as an acceptable means of responding to unauthorized practice of law issues.

It is interesting to note that the in-house general counsel discussed in the hypothetical may have problems of her own. California's Rules of Professional Conduct state that members of the bar "shall not aid any person or entity in the unauthorized practice of law."[74] By retain-

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[58] *Clearly this assumption is in error. Many states that have addressed the MJP issue have defined the practice of law within a given state much more narrowly than did the court in Birbrower and many states have created sufficient exemptions to their unauthorized practice of law rules that the harsh application described in the hypothetical would not occur.*

[59] *Birbrower, supra, at 128-129.*

[60] *Id.*

[61] *Id.*

[62] *Condon, supra, at 927.*

[63] *Birbrower, supra, at 128.*

[64] *Id. at 132.*

[65] *Id. at 130.*

[66] *Id., citing U.S. Dist. Ct. Rules, Northern Dist. Cal., Rule 11-1(b); Eastern Dist. Cal., Rule 83-180; Central Dist. Cal., Rule 2.2.1; Southern Dist. Cal., Rule 83.3 c.1.a. Under Federal law, attorneys who work for the federal government must be admitted to at least one bar, but not necessarily in the state where they are practicing. Despite broad authority conferred on the Department of Justice to transfer "any officer of the Department of Justice … to any State or district in the United States to attend to the interests of the United States" (28 U.S.C. § 517), at least one criminal defendant was able to have a prosecutor removed because the prosecuting attorney was not a member of the bar of the state where the U.S. District Court was located. The Perils of Multijurisdictional Practice, The Washington Lawyer (February, 2002), pages 21, 26.*

[67] *Birbrower, supra at 127.*

[68] *Bus. & Prof. Code § 6126.*

[69] *California Rules of Professional Conduct, Rule 1-300(B).*

[70] *ABA's Model Rules of Professional Conduct, Rule 5.5 In July 2000 the ABA appointed a task force to study multijurisdictional practice and make recommendations for changes to the Model Rules. The ABA recommendations are discussed below.*

[71] *Birbrower, supra, at 126.*

[72] *Id. at 133-134.*

[73] *See, e.g., "Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court: A Defensible Outcome, But a Striking Example of the Need to Reform Unauthorized Practice of Law Provisions" by Jack Balderson, Jr., 36 San Diego L. Rev 871 (1999).*

[74] *California Rules of Professional Conduct, Rule 1-300(A).*

ing the firm to provide legal services, setting up the interviews and arranging the transportation out-of-state, the general counsel of the company has opened herself up to scrutiny.

In addition to the personal and professional consequences to the lawyer engaged in MJP, the client too may have some risk. Some have expressed concern that *Birbrower* may have implications on the attorney-client privilege. If an out-of-state firm is not authorized to practice law in a particular jurisdiction where an interview took place, it could be argued that the firm was not engaged in the practice of law, rather, it was simply rendering a service as a "business advisor."[75] It is fairly well settled that when in-house counsel is working in the capacity of a "business advisor" rather than a "legal advisor," the company cannot claim the attorney-client privilege over such work.[76] Seemingly, the same rules could be applied to the instant hypothetical, voiding any privilege over the interviews between counsel and the plant managers and engineers.

WHERE DO WE GO FROM HERE?

Birbrower and concerns over the adoption of its principles in other states have spawned numerous state and national proposals intended to permit MJP while still protecting the general public from non-lawyers misrepresenting their qualifications. The proposals currently under consideration vary widely, from a national admission system, to tailored exceptions permitting attorneys engaged in specific aspects of law practice. Whether modest or dramatic, the proposals share two common threads — the recognition of the multi-state nature of the modern practice of law and the easing of restrictions on MJP imposed by rules regarding the unauthorized practice of law.

CALIFORNIA SUPREME COURT TASK FORCE

In January 2001, the California Supreme Court Task Force on Multijurisdictional Practice was established to study the effect of California's rules on the unauthorized practice of law on MJP and to make recommendations to California's Supreme Court, which establishes the rules regulating the practice of law in the state. The Task Force, comprised of non-lawyers and lawyers in both public and private practice, sent its final report to the Court and the public on January 7, 2002.[77]

The report observed that existing rules permitting out-of-state attorneys to practice in California without full admission did not adequately address the problem faced by clients seeking to retain counsel of their choice.[78] As noted in the report, "today's reality is that the needs of many clients do not stop at state lines, and neither does the legal practice of the attorneys who represent them."[79] Accordingly, the task force recommended changes to the applicable rules and laws to permit the following variations of what has become known as MJP.[80]

The task force recommended that the rules permit in-house counsel residing in California to provide "out-of-court legal services exclusively for a single, full-time business entity employer (e.g., a corporation or partnership) that does not provide legal services to third parties."[81] The in-house counsel would be required to register with the state bar, pay bar fees, and comply with California bar standards other than the bar examination, e.g., continuing legal education and "acting in a manner consistent with good moral character."[82]

The report expressly left open, however, several complicated issues for resolution by the Supreme Court: (1) defining "business entity" to ensure that only "sophisticated" consumers of in-house legal services are included; (2) determining the extent to which affiliates, subsidiaries and other related entities are included in the definition of clients the registered in-house lawyer can permissibly serve; and (3) evaluating the responsibilities, if any, to be imposed on the employing entity (for example, to inform the State Bar about all lawyers it employs who are resident in California but not members of the State Bar).[83]

For nonlitigating out-of-state attorneys in private practice (including in-house counsel), the report recommended that they be permitted to provide legal services in California without registration, so long as the services were provided on a temporary basis.[84] Examples fitting under this exception, according to the report, include an attorney representing a "sophisticated out-of-state client," in a transaction occurring in part in California; a specialist in an area of Federal law (examples include U.S. constitutional law and Federal income taxation) providing advice to lawyers in California to assist them in representing their clients; and in-house counsel … traveling to an office or plant in California to undertake discrete legal tasks for his or her corporate employer."[85] Also permissible, according to the report, are attorneys temporarily practicing in California as part of litigation elsewhere (presumably to take depositions, review documents, etc.) or in California at the pre-filing stage of in-state litigation, when a *pro hac vice* admission is currently unavailable.[86]

The task force again expressly left to the Supreme Court how to define the duration, the frequency and the nature of the activities that could be carried on under the "temporary practice" exception, as well as leaving to the Supreme Court issues related to regulation of advertising and how to obtain funding for the disciplinary activities related to monitoring and prosecuting out-of-state attorneys who violate the rules.[87] Consequently, though California has been on the forefront of states responding to the issues raised by *Birbrower*, significant areas remain to be defined more precisely before any changes to the rules of practice will be enacted.

DEVELOPMENTS IN OTHER STATES

Other states are in various stages of addressing the problem of how unauthorized practice rules apply to MJP. Several of

[75] *Busted! Unauthorized Practice in the Corporate Setting (1998), http://www.acca.com/protected/pubs/docket/so99/busted.html, page 6.*
[76] *Id.*
[77] *California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendation, supra, page 5, www.courtinfo.ca.gov/reference/documents/finalmjprept.pdf.*
[78] *Id. at page 20.*
[79] *Id.*
[80] *The exceptions apply only to lawyers admitted and in good standing in another state.*
[81] *Id. at pages 27-29.*
[82] *Id.*
[83] *Id. at pages 29-30.*
[84] *Id. at pages 32-34.*
[85] *Id. at page 33.*
[86] *Id. at pages 37-39.*
[87] *Id. at pages 34-37.*

the most populous states, including Illinois and New York, recently established task forces to study the problem, but no recommendations have yet been made.[88] Other states' timelines are more similar to California's.[89]

Nevada established a commission that issued recommendations on state rule changes in November 2001.[90] Among other rule changes, the Nevada commission suggested allowing out-of-state attorneys to provide transactional legal advice to Nevada clients "occasionally" without any admission or registration requirements.[91] In an even greater departure from existing rules, the Nevada commission recommended allowing transactional attorneys to provide ongoing or persistent representation of Nevada clients by registering with the Nevada bar association and associating with a Nevada attorney prior to commencing the representation.[92] The proposed rules, like California's task force proposal, also would allow in-house counsel of a Nevada company to be admitted to practice out-of-court subject only to registration and payment of bar fees.

A task force established by the Texas State Bar recommended changes similar to those recommended by the California task force. The Texas changes would also allow companies to employ in-house counsel not admitted in Texas so long as the attorney does not appear in court.[93] The new Texas rule also would allow out-of-state attorneys to prepare a broad range of "legal instruments," but would not permit them to create forms to be used in transactions affecting the constitutionally protected homestead rights of a Texas citizen.[94]

AMERICAN BAR ASSOCIATION

Proposals to modernize MJP rules are being circulated nationally as well. In July 2000, the American Bar Association appointed a task force to study MJP and make recommendations for changes to the ABA's Model Rules of Professional Responsibility and to state rules.[95] The task force found that MJP is a "practical reality derived from the emerging needs of clients and a necessary and appropriate practice" and that existing laws "as written inhibit lawyers from rendering legal services in a manner that best serves the public."[96]

Despite being able to develop a consensus on the problem, the task force was unable to develop a consensus on a complete solution. The task force did assemble majority support for some specific recommendations.[97] These recommendations were issued for public comment between November 2001 and March 2002. The recommendations are generally styled as "safe harbors" from Model Rule 5.5, which prohibits unauthorized practice.[98]

The ABA task force proposed changes which would give safe harbors when an attorney is: (1) practicing temporarily in another jurisdiction, (2) working as co-counsel with an admitted lawyer in another jurisdiction, (3) performing services a non-lawyer can render, (4) representing clients in administrative agency or alternative dispute resolution settings, or (5) performing non-litigation work (i.e., transactional or counseling) ancillary to representation of a client in the state where the lawyer is admitted.[99]

In addition to the eased restrictions applicable to all lawyers, the ABA task force also recommended rules specific to in-house counsel. The modification would allow in-house corporate counsel to render advice to their employer or to "commonly owned organizational affiliates" of the employing company in another jurisdiction without taking the bar exam.[100] The task force also recommended that experienced attorneys wishing to become permanent members of other state bars should be permitted to do so on motion, under a model "admission on motion" procedure to be adopted by each state.[101] Finally, the report recommended that states cooperate on reciprocal disciplinary measures and that the ABA establish a Coordinating Committee on Multijurisdictional Practice to monitor developments and determine whether additional reform is needed.[102]

A coalition of several groups commented critically on the ABA's proposed changes expressing concern about the ABA's proposal's "reliance on a problematic and perplexing panoply of safe harbors to Model Rule 5.5"[103] The coalition further characterizes the ABA approach as a "misdirected means of advocating the MJP reform that the profession must enact."[104] The coalition's alternative "common sense" suggestion is a model statute that would expressly allow practice by a lawyer admitted and in good standing in another jurisdiction (1) before litigation where the attorney expects to be authorized to appear; (2) where the lawyer is an employee of the client and acts on the client's behalf; and (3) where the practice is temporary and non-systematic and the lawyer neither establishes a permanent presence in the state nor holds himself or herself out as authorized to practice in the jurisdiction.[105]

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88 *http://www.nysba.org/whatsnew/xc-sum-6-01.htm (March 6, 2002); http://www.isba.org/association/isbanews.asp (March 6, 2002).*

89 *E.g. Florida (task force report issued on February 21, 2002, Board of Governors to consider at meeting on March 15, 2002), http:www.flabar.org/tfbi, and Texas (report issued April 2001), http://www.texasbar.com/newsinfo/newevents/upltf.pdf.*

90 *Report of the Supreme Court of Nevada Commission on Multijurisdictional Practice, November 2001, www.nvbar.org/pdfs/mjpReport.pdf.*

91 *Id. at page 9.*

92 *Id. at page 11.*

93 *State Bar of Texas Task Force, Recommendation of a New Statutory Definition For The Unauthorized Practice of Law (April 2001), page 18, www.texasbar.com/newsinfo/newsevents/upltf.pdf.*

94 *Id. at page 22.*

95 *American Bar Association, Interim Report of the Commission on Multijurisdictional Practice, November 2001, page 4, http://www.abanet.org/cpr/mjp-final-interim-report.doc.*

96 *Id. at page 12.*

97 *Demonstrating the difficulty in reaching a national consensus on resolving the problem, each recommendation of the ABA's report was supported by a majority, but no majority supported all of them.*

98 *ABA's Model Rules of Professional Conduct, Rule 5.5 states:*

> *"A lawyer shall not: (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."*

99 *Id. at pages 21, 23-27.*

100 *Id. at pages 27-28.*

101 *Id. at pages 30-31.*

102 *Id. at page 34.*

103 *A Commonsense Approach to Multi-jurisdictional Practice, http://www.acca.com/advocacy/mjp/commonsenseproposal.html.*

104 *Id.*

105 *Id.*

The time period for comments on the ABA task force's proposal closed in March, 2002. At the time this article went to press, the Commission planned to issue a final report in May 2002, for consideration by the ABA House of Delegates at its annual meeting in August 2002.

AMERICAN CORPORATE COUNSEL ASSOCIATION NATIONAL COMPACT PROPOSAL

Not surprisingly, one of the groups most vocal about the pressing need for reform in the area of MJP has been the American Corporate Counsel Association (ACCA), an association representing the interests of in-house counsel. The ACCA Board of Directors has been urging reform in this area since 1986.[106]

ACCA suggests a "national compact" approach akin to the current driver's license regime. Under the ACCA proposal, states would continue to regulate lawyer admission and the practice of lawyers within their borders, but states would agree to be part of a national compact that would allow any attorney licensed in one state to move to a new state and be admitted without retaking the bar examination.[107] The compact would also allow lawyers who are admitted in one state and whose practice "temporarily or occasionally" takes them into other states to have an "inferred license" to practice in the other states, subject to local disciplinary control but without requiring any formal requirements (including registration or the taking of a bar examination) to be met.[108]

Most groups that have considered the matter have rejected the notion of a "national compact" approach, finding that such a plan would be exceptionally difficult to bring about and would result in an unacceptable loss of control over those who practice law within the state (not to mention loss of revenue from bar exam fees and annual dues).

California's task force on MJP rejected the concept of a national compact on the basis that it would require every state to participate in its creation and that full comity between states would mean that requirements for admission in California would "in effect be the lowest standard adopted in any other state."[109] The ABA's task force on the matter, in rejecting a national regulatory system, acknowledged the ease of allowing attorneys to practice nationally once they are admitted in one state, but raised concerns that a national system would erode the quality of local practice and reduce the number of attorneys with strong connections to the local community.[110] The ABA task force also recognized the concern that attorneys would engage in a "race to the bottom" if admission in one state allowed admission to every other state.[111] The least stringent state admission standard would thereby end up as the national admission standard.[112] Consequently, it appears there is little appetite for adoption of ACCA's national compact approach.

Recognizing the difficulties in achieving approval of their "national compact" approach and the unlikelihood of prompt action on a national model statute, ACCA also suggested, that, at a minimum, exceptions be made to rules regarding the unauthorized practice of laws to permit in-house counsel lacking an in-state license to nevertheless provide legal service to corporate employers.[113]

CONCLUSION

With all the proposals being discussed by bar associations locally and nationally, there appears to be much concern and attention regarding the effect *Birbrower* and the unauthorized practice of law rules have on a lawyer or firm engaged in MJP. Although it is too early to determine how these issues will ultimately be resolved, there does seem to be a few meaningful certainties.

First, there seems to be unanimous appreciation for the problem. Whether the *Birbrower* case created the issue, or merely brought it to light, the unauthorized practice of law rules in many states do not contemplate the modern legal and business environment. They were written before facsimile machines, email and the Internet became essential tools of communication for the legal practitioner. They were written prior to the establishment of multi-state and multi-national corporations. Seemingly all who have considered the topic have concluded that some change must be made.

Second, most groups with articulated proposals are prepared to allow in-house counsel the ability to practice law on behalf of a business entity, provided they are not practicing law on behalf of the general public. These proposals identify the primary purpose of the relevant statutes as protecting the unwary public from those unqualified to practice law and note that many business entities are as well or better suited to make this determination than is the applicable state bar.

Lastly, most groups acknowledge that a temporary or transitory practice within a given state is not appropriate for regulation by laws relating to the unauthorized practice. Whether an attorney's presence in the state is ancillary to or connected with out-of-state activities or it is conducted as a precursor to in-state activities that are otherwise permissible, most proposals are prepared to make allowances for a temporary exception.

However, despite areas of consensus, given the historical legacy of local regulation over the practice of law, revisions to practice of law rules will likely vary in a significant manner from state to state, with a national approach unlikely. Accordingly, even after the proposals addressing the concerns outlined in this article are implemented, in whatever form they may take, the licensed practitioner engaged in MJP still must cautiously approach the practice of law across state lines.

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[106] *American Corporate Counsel Association, Cover Letter to "The In-House Case for Multijurisdictional Practice of Law, February 16, 2001, page 1, http://www.acca.com/advocacy/mjp/accaposition-cl.html.*

[107] *American Corporate Counsel Association, The In-House Case for the Multijurisdictional Practice of Law in the United States, page 3, http://www.acca.com/advocacymjp/accapositon.html.*

[108] *Id. at page 4. John Payton, President of the D.C. Bar, recently observed, "We couldn't function as a country unless we let our individual state driver's license be honored in all jurisdictions . . . we need to have lawyers crossing state boundaries just as seamlessly as trucks and motorists are using the national highway." The Perils of Multi-jurisdictional Practice, The Washington Lawyer (February, 2002) pages 21, 26.*

[109] *California Supreme Court Advisory Task Force on Multijurisdictional Practice Final Report and Recommendations, supra, at 22-23.*

[110] *American Bar Association, Interim Report of the Commission on Multijurisdictional Practice (November 2001), page 4, http://www.abanet.org/cpr/mjp-final-interim-report.doc at pages 19-20.*

[111] *Id. at page 19.*

[112] *Id. at page 20.*

[113] *American Corporate Counsel Association, The In-House Case for the Multijurisdictional Practice of Law in the United States, supra, at page 6.*